

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BRENDA TURUNEN,

Plaintiff,

v.

Case No. 2:13-CV-106

KEITH CREAGH, DIRECTOR,
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES and JAMIE
CLOVER ADAMS, DIRECTOR,
MICHIGAN DEPARTMENT OF
AGRICULTURE

HON. GORDON J. QUIST

Defendants.

ORDER TO SHOW CAUSE

Plaintiff, Brenda Turunen, is a member of the Keweenaw Bay Indian Community (KBIC), a federally recognized Indian tribe in Michigan's Upper Peninsula that is the successor in interest to the L'Anse and Ontonagon bands of the Lake Superior Chippewa Indians. In 1842, the Lake Superior Chippewa Indians signed a treaty with the United States of America, 7 Stat. 591 (the 1842 Treaty), in which the Indian signatories ceded large portions of the western Upper Peninsula of Michigan, but reserved "the right of hunting on the ceded territory, with the other usual privileges of occupancy." 7 Stat. 591. Plaintiff owns property that is within the territory ceded in the 1842 Treaty, and seeks a declaration that the 1842 Treaty allows her to raise animals free from state regulation on that property.

The Federal Rules of Civil Procedure require that certain persons must be joined if they are subject to service of process and will not deprive the court of subject matter jurisdiction. Fed. R. Civ. P. 19(a). Specifically, a person must be joined if:

- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the persons's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1)(B). If joinder is not feasible, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed."

Fed. R. Civ. P. 19(b). A court may raise the absence of a required person sua sponte. *Republic of Phillipines v. Pimentel*, 553 U.S. 851, 861, 128 S. Ct. 2180, 2188 (6th Cir. 2008).

The Sixth Circuit previously addressed the issue of joinder in a dispute involving fishing rights under the 1842 Treaty. *Keweenaw Bay Indian Cmty. v. Michigan*, 11 F.3d 1341, 1347 (6th Cir. 1993). The KBIC sought a declaration that it had exclusive fishing rights under the treaty, and sued individual members of two other bands that were successors in interest to the treaty's signatories, but did not sue the bands themselves. *Id.* at 1344. The district court dismissed the action after finding that the other bands were necessary parties and could not be joined because they possessed tribal sovereign immunity. *Id.* at 1345. The Sixth Circuit affirmed the district court's decision, explaining that the absent bands, as signatories to the 1842 Treaty, had an interest in the suit that could be impaired or impeded by a judgment in the case, and that disposition of the case without the bands would leave the other defendants (state officials) subject to a substantial risk of incurring multiple or otherwise inconsistent obligations. *Id.* at 1347.

Plaintiff's case rests on the twin propositions that the KBIC received certain rights in the 1842 Treaty, and that she is entitled to exercise such rights based on her membership in the KBIC. To resolve Plaintiff's claims, the Court must determine the scope of the rights retained by the KBIC and other signatories to the 1842 Treaty. And yet, neither the KBIC nor the treaty's other

signatories are parties to this action. Because the KBIC and other signatories appear to have an interest in the outcome of this litigation, they may be inclined to seek legal recourse in the event that a judgment were to deprive them of any treaty rights to which they believe they are entitled. *See id.* at 1347. *See also Skokomish Indian Tribe v. Goldmark*, 994 F. Supp. 2d 1168, 1186-90 (W.D. Was. 2014) (concluding that other signatories to a treaty were necessary parties).

Therefore,

IT IS HEREBY ORDERED that within **fourteen (14) days** of the entry of this Order, Plaintiff shall show cause (1) why the KBIC, as well as other successors in interest to the signatories of the 1842 Treaty, are not required parties to this action; and (2) if such parties are required, why joinder is not feasible; and (3) if joinder is not feasible, why this action should not be dismissed. Defendants may respond within **fourteen (14) days** of the date of Plaintiff's filing.

IT IS FURTHER ORDERED that the motion hearing currently scheduled for **July 14, 2015** is adjourned without date pending a resolution of the issues addressed in this Order.

Dated: June 29, 2015

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE